

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YING WAI WONG,

Defendant.

Case No. CR06-5668FDB

ORDER DENYING DEFENDANT  
WONG'S MOTION TO SUPPRESS

Defendant Wong moves to suppress evidence illegally seized and statements improperly taken by government law enforcement officials. Specifically, Defendant argues that the government agents exceeded the scope of the first warrant that they obtained, which allowed them to search for evidence of illegal entry. The issues have been fully briefed, a suppression hearing was held on May 10, 2007, additional briefing on the issue of border searches has been submitted, and the Court is fully informed and denies Defendant Wong's motion to suppress evidence and statements.

***The Searches***

The warrant allowed the agents to look for indicia of ownership and occupancy, papers that would establish citizenship, and any electronic devices that would establish routes of travel. When they entered the boat cabin, they found five duffle bags and a small suitcase on the bunk. SA

1 Gleckman opened one of the bags and discovered vacuum-sealed packages that contained pills of  
2 various colors. A field test was performed, and the pills tested positive for the properties of MDMA.  
3 The agents then sought an addendum to the first warrant, which would cover narcotics and related  
4 evidence. While the agents were waiting for the Superior Court Judge to call them back, they  
5 proceeded to open all of the bags, finding pills in all of them.

6 Defendant Wong argues that there were no exigencies or other justification for continuing the  
7 search without authorization; instead of waiting for the Judge to amend the warrant, the agents  
8 conducted a warrantless search.

9 There is an exception to the warrant requirement for searching vehicles because of their  
10 mobility; thus, in *Carroll v. United States*, 267 U.S. 132 (1925), the Supreme Court held that  
11 vehicles may be searched without warrants if the officer undertaking the search has probable cause to  
12 believe that the vehicle contains contraband. “[T]he justification to conduct such a warrantless  
13 search does not vanish once the car has been immobilized; nor does it depend upon a reviewing  
14 court’s assessment of the likelihood in each particular case that the car would have been driven away,  
15 or that its contents would have been tampered with, during the period required for the police to  
16 obtain a warrant.” *Michigan v. Thomas*, 458 U.S. 259, 261 (1982).

17 In this case the boat had been brought out of the water and was up on the trailer, which was  
18 attached to the Defendants truck, all of which had been towed out of the water by the Agents’ truck.  
19 Defendant Ho, who had been driving the boat, gave his consent to Agent Gleckman to search the  
20 boat. Because the boat’s small cabin was locked, the Agents sought a search warrant for documents  
21 indicating ownership, areas of travel, and other evidence of illegal entry into the United States.  
22 Upon entry of the small cabin, and finding that the first bag opened contained pills testing positively  
23 for MDMA, the Agents went back to the Judge to obtain an addendum to the first search warrant to  
24 search for evidence of drugs.

25 At the point when the Agents found the pills testing positively for MDMA, they had probable

1 cause to believe that the boat was being used to smuggle drugs, and under federal law, *Carroll* and  
2 its progeny, were authorized to search the boat without a warrant. Moreover, the initial search  
3 warrant did not become invalid at the instant the drugs were found, nor did application for an  
4 addendum to the original search warrant negate their authority to search. The agents were still  
5 entitled to rely on the original search warrant in opening the other bags to see whether there was  
6 evidence of illegal entry into the United States, and the agents also had probable cause to search  
7 based on a belief that the boat was being used to smuggle drugs.

### 8 **Border Search**

9 The parties have submitted additional briefing on the subject of border searches as applied to  
10 this case. Having considered the parties' submissions, the Court concludes that the ICE agents in  
11 this case had a reasonable suspicion that the defendants were involved in criminal activity and  
12 conducted a legal search of the boat.

13 The parties apparently agree that when a search does not occur at a permanent border  
14 checkpoint or the functional equivalent thereof, reasonable suspicion to conduct the search is  
15 required. In *United States v. Sahanaja*, 430 F.3d 1049, 1054 (9<sup>th</sup> Cir. 2005), the Court noted that  
16 reasonable suspicion of criminal activity is required to conduct an extended border search and  
17 referenced "extended border search doctrine" articulated in *Alexander v. United States*, 362 F.2d  
18 379, 382 (9<sup>th</sup> Cir. 1966):

19 Where ... a search for contraband by Customs officers is not made at  
20 or in the immediate vicinity of the point of international border  
21 crossing, the legality of the search must be tested by a determination  
22 whether the totality of the surrounding circumstances, including the  
23 time and distance elapsed as well as the manner and extent of  
24 surveillance, are such as to convince the fact finder with reasonable  
25 certainty that any contraband which might be found in or on the  
26 vehicles at the time of search was aboard the vehicle at the time of  
entry into the jurisdiction of the United States. Any search by  
Customs officials which meets this test is properly called a "border  
search".

1 *Sahanaja*, 430 F.3d at 1053-54. “Reasonable suspicion exists when an officer is aware of specific,  
2 articulable facts which, when considered with objective and reasonable inferences, form a basis for  
3 particularized suspicion.” *United States v. Tiong*, 224 F.3d 1136, 1139 (9<sup>th</sup> Cir. 2000). Factors to  
4 consider may include:

5 (1) characteristics of the area; (2) proximity to the border; (3) usual patterns of traffic  
6 and time of day; (4) previous alien or drug smuggling in the area; (5) behavior of the  
7 drive including obvious attempts to evade officers; (6) appearance or behavior of the  
8 passengers; (7) model and appearance of the vehicle; and (8) officer experience.

9 *Id.*

10 The boat’s driver, Defendant Ho, did not enter the United States at the port of entry at Port  
11 Angeles, but instead made entry at the Freshwater Bay Marina without making the required contact  
12 with immigration officials prior to landing in the United States. The earlier surveillance of the  
13 defendants as described at the suppression hearing, the defendants’ entry into the United States  
14 without reporting at an area other than a port of entry, the defendants’ conflicting stories about what  
15 they were doing, together with the experience of the agents involved is sufficient to conclude that  
16 under the totality of the circumstances, the agents had a reasonable suspicion of criminal activity  
17 sufficient to conduct a border search.

### 18 ***The Statements***

19 Defendant Wong also argues that his statements made to Agent Gleckman, must be  
20 suppressed. Agent Gleckman identified himself to Wong and asked him what was going on. Wong  
21 stated that

22 he and his friends were at the boat ramp to pick the boat up. Wong then told SA  
23 Gleckman that he and his friends did not travel with the boat down here, that the  
24 trailer was empty when they got here and then stated that he was just traveling with  
25 his friends and wasn’t sure what was happening.

26 (Def. Wong’s Memorandum, p. 10.) Defendant Wong argues that Agent Gleckman had identified  
himself to Wong, that the Agents’ truck was blocking the defendants’ truck from moving, that there  
were agents scattered around the scene, that Wong had not been given his *Miranda* rights, and that

1 the statements, therefore, must be suppressed.

2 The Ninth Circuit states the rule for determining the voluntariness of a statement:

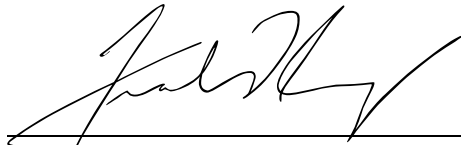
3 “The test is whether, considering the totality of the circumstances, the government  
4 obtained the statement by physical or psychological coercion or by improper  
5 inducements so that the suspect’s will was overborne.” ... This totality of the  
6 circumstances test was clarified and refined by the Supreme Court in *Colorado v.*  
7 *Connelly*, 479 U.S. 157 (1986)(Connelly). There, the Court held that “coercive  
8 police activity is a necessary predicate to the finding that a confession is not  
9 “voluntary” within the meaning of the Due Process Clause of the Fourteenth  
10 Amendment.” The Court emphasized that in the confession cases it had decided over  
11 the previous 50 years, the “crucial element” had been the presence of “police  
12 overreaching.” *Id.* at 163&n.1. Thus, the Court has made it clear that a confession is  
13 only involuntary under the fourteenth amendment if the police use coercive activity to  
14 undermine the suspect’s ability to exercise his free will.

15 *Derrick v. Peterson*, 924 F.2d 813, 317-18 (1990)(citations omitted).

16 In Wong’s circumstances, the crucial element of overreaching by the agents is lacking, and  
17 the statements need not be suppressed.

18 NOW, THEREFORE, IT IS ORDERED: Motion of Defendant Ying Wai Wong to Suppress  
19 [Dkt. # 89] is DENIED.

20 DATED this 16<sup>th</sup> day of May, 2007.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE